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**(a)** In any instance in which the Bankruptcy Court has entered a final order or judgment and a party contends that the matter is one in which the Bankruptcy Court lacked constitutional or statutory authority to enter a final order or judgment, such party must:

**(1)** proceed by filing a timely notice of appeal of the Bankruptcy Court's final order or judgment; and

**(2)** to avoid a waiver of any right to review by the District Court, elect that the appeal of the final order or judgment be heard by the District Court in the manner set forth in 28 U.S.C. §158(c)(1) and Bankruptcy Rule 8001(e).

**(b)** The requirements for the contents of the appellate briefs in a case in which a party contends that the Bankruptcy Court lacked authority to enter a final order or judgment are set forth in B.L.R. 8010-2.

### **Commentary**

Because the Bankruptcy Court decides whether it has authority to enter a final order or judgment, or whether it must submit proposed findings of fact and conclusions of law to the District Court, there will be instances in which the Bankruptcy Court will enter judgment in a case in which a party contends that the Bankruptcy Court had authority only to submit proposed findings and conclusions. This rule is intended to clarify two points about how the parties should proceed in such a case. First, the party seeking review must proceed by filing a notice of appeal, because that is the proper process for obtaining review of an order or judgment, even where the party seeking review believes that the Bankruptcy Court did not have authority to enter the order or judgment. Second, to preserve any right to de novo review by an Article III court, a party must elect to have the appeal heard by the District Court, rather than by the Bankruptcy Appellate Panel. Under District Court General Order 24, if the District Court agrees that the Bankruptcy Court should have issued proposed findings and conclusions, it can treat the decision of the Bankruptcy Court as proposed findings and conclusions subject to de novo review. The Bankruptcy Appellate Panel cannot itself provide de novo review under Article III. A party that does not avail itself of the opportunity to obtain de novo review by an Article III court may be found to have waived any right to such review.

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